



African Court
on Human and Peoples' Rights

Arusha, Tanzania
Website: www.african-court.org
Telephone+255-732-979-509
PRESS RELEASE
JUDGMENT SUMMARY

LAYFORD MAKENE V UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 028/2017
RULING
JURISDICTION AND ADMISSIBILITY

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Date of Press Release: 2 December 2021

Dar es Salaam, 2 December 2021: The African Court on Human and Peoples' Rights (the Court), today, delivered a Ruling in the case of *Layford Makene v. United Republic of Tanzania*.

Layford Makene (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). In his Application, he alleged that the Respondent State violated his right to non-discrimination and also his right to fair trial contrary to Articles 2 and 7(1)(c), respectively, of the African Charter on Human and Peoples' Rights (the Charter).

The Court observed that, as per Article 3(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), it had to, preliminarily, determine whether it had jurisdiction to hear the Application.

In respect of its jurisdiction, the Court noted that the Respondent State had raised objections to its material jurisdiction and temporal jurisdiction. In respect of the Court's material jurisdiction, the Respondent State argued that the Court lacked jurisdiction to quash the conviction and sentence of the Applicant and that if it did so, it would be overturning the decision of its Court of Appeal, which is the highest court in the Respondent State. As for the Court's temporal jurisdiction, the Respondent State argued that the Court did not have temporal jurisdiction since the facts alleged by the Applicant were not ongoing.

With regard to the Respondent State's objection to its material jurisdiction, the Court, recalling its jurisprudence, affirmed that it is not an appellate court with respect to decisions of national courts. The preceding notwithstanding, the Court held that this does not preclude it from examining relevant proceedings in national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned. In the present case, the Court found that it would not be sitting in appeal of decisions of the Respondent State's Court of Appeal by considering the violations alleged by the Applicant. The Court thus dismissed the Respondent State's objection to its material jurisdiction.

With respect to the Respondent State's objection to the Court's temporal jurisdiction, the Court recalled that the same would be established insofar as the violations alleged by the Applicant

occurred after the Respondent State became a party to the Charter and the Protocol. In the present case, the Court noted that the Respondent State became a Party to the Charter in 1986 and the Protocol in 2006 and it further deposited the Declaration in 2010. Given the preceding, the Court observed that the violations alleged by the Applicant stemmed from judicial proceedings which commenced in 2006 and ended in 2011. In the circumstances, the Court found that the Respondent State was a Party to both the Charter and the Protocol and had also deposited the Declaration at the time the alleged violation of the Applicant's rights was committed. The Court, therefore, concluded that it had temporal jurisdiction to hear the Application and, therefore, dismissed the Respondent State's objection

Although none of the parties questioned other aspects of its jurisdiction, the Court nevertheless examined all the other aspects of its jurisdiction and confirmed that it had jurisdiction to hear the Application.

In terms of the admissibility of the Application, the Court, as empowered by Article 6 of the Protocol, had to determine whether the requirements of admissibility, as provided under Article 56 of the Charter and Rule 50 of the Rules of Court ("the Rules), had been met. In this connection, the Court considered the two (2) objections raised by the Respondent State, relating, first, to the requirement of exhaustion of local remedies, and, second, to the time within which the Application was filed.

The Respondent State argued that the Applicant had legal remedies provided for in domestic law to address his grievances. According to the Respondent State, the Applicant did not exhaust these domestic remedies before approaching the Court. The Respondent State thus submitted that by failing to avail himself of the available domestic legal remedies, the Applicant failed to exhaust local remedies.

In relation to this objection, the Court recalled that it has held that once criminal proceedings against an applicant have been determined by the highest appellate court, the Respondent State will be deemed to have had had the opportunity to cure the violations which, according to the Applicant, resulted from the proceedings. In the instant case, the Court noted that the Applicant's appeal before the Court of Appeal, the highest court of the Respondent State, was determined when that Court rendered its judgment on 29 June 2011. According to the Court, therefore, the Respondent State had the opportunity to cure the violations allegedly committed during the Applicant's trial.

Specifically with regard to the option of applying for review of the decision of the Court of Appeal, the Court reiterated its position that an application for review of the Court of Appeal's judgment, within the Respondent State's jurisdiction, is an extraordinary remedy which an applicant is not required to exhaust. The Court thus dismissed the Respondent State's objection that the Applicant had not exhausted domestic remedies.

With regard to the objection alleging failure to file the application within a reasonable period of time, the Respondent State submitted that the Application was not filed within a reasonable period of time since the Court of Appeal delivered its judgment on 30 June 2011 and the Applicant filed the instant Application on 14 September 2017 thus a period of seven (7) years and six (6) months elapsed between the date on which the Respondent accepted the competence of the Court and the date on which the Applicant filed his Application.

In dealing with this objection, the Court recalled that Article 56(6) of the Charter and Rule 50(2)(f) of the Rules do not specify any period within which Applicants should seize the Court.

The Court noted that, in the instant case, the time within which the Application should have been filed must be computed from the date the Court of Appeal dismissed the Applicant's appeal i.e. 29 June 2011. Since the Application was filed with the Court on 14 September 2017, the period to be considered was six (6) years, two (2) months and sixteen (16) days. The Court then reiterated its established position that the reasonableness of a time limit of seizure will depend on the particular circumstances of each case and should be determined on a case-by-case basis. In the present case, the Court noted that the Applicant simply affirmed that he exhausted local remedies without any further substantiation. According to the Court, although the Applicant was, at the material time, incarcerated he failed to provide the Court with either evidence or cogent arguments to demonstrate that his personal situation prevented him from filing his Application timeously. The Court held, therefore, that in the absence of any cogent explanation(s) as to why the Applicant took six (6) years, two (2) months and sixteen (16) days to file the Application, it would uphold the Respondent State's objection and find that the Application was not filed within a reasonable period of time as required by Article 56(6) of the Charter, which is restated in Rule 50(2)(f) of the Rules.

The Court having found that the Application did not satisfy the requirement in Rule 50(2)(f) of the Rules, held that it need not rule on the Application's compliance with the admissibility requirements set out in Article 56(1), (2), (3), (4), and (7) of the Charter as restated in Rule 50(2)(a), (b), (c), (d) and (g) of the Rules, as these conditions are cumulative. Given all the preceding, the Court declared the Application inadmissible.

On costs, the Court ordered that each party should bear its own costs.

Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at: <https://www.african-court.org/cpmt/details-case/0282017>

For any other queries, please contact the Registry by email: registrar@african-court.org

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at: www.african-court.org.